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An appropriate amendment to 39 CFR Part 111 will be published if the proposal is adopted.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 021108270-3204-02; I.D. 102802C]

RIN 0648-AQ53

Endangered and Threatened Species; Finding for a Petition to Revise Critical Habitat for Northern Right Whales

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Response to petition; final determination.

SUMMARY: On July 11, 2002, NMFS received a petition dated July 7, 2002, requesting that NMFS revise the present critical habitat designation for the western North Atlantic right whale, *Eubalaena glacialis*, (right whales) under the Endangered Species Act (ESA) by combining and expanding the current Cape Cod Bay and Great South Channel critical habitats in the Northeast and by expanding the current critical habitat in the Southeast. NMFS has determined that the requested revision, as specified by the petitioner, is not warranted at this time. However, NMFS will continue to analyze the physical and biological habitat features essential to the conservation of right whales.

ADDRESSES: Comments and requests for copies of this determination should be addressed to Assistant Regional Administrator for Protected Resources, Protected Resources Division, NMFS, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT:

Brian Hopper, Northeast Region, telephone (978) 281-9328 x6509, fax (978) 281-9394; Barb Zoodsma, Southeast Region, telephone 904-321-2806, fax (904) 321-1579; or Kristy Long, telephone (301) 713-1401, fax (301) 713-0376.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several background documents on right whales and the critical habitat designation process can be downloaded from the NOAA Fisheries Web Site at <http://www.nmfs.noaa.gov/>.

Background

Right whales in the North Atlantic are one of three populations of endangered right whales worldwide. The other populations occur in the North Pacific and the Southern Hemisphere. The southern right whale is recognized as a separate species and, until recently, the North Atlantic and North Pacific stocks were defined as a single species. However, recent genetic studies provided evidence that supported separating species status for these two populations, one in the North Atlantic and another in the North Pacific. On April 10, 2003, NMFS published a final rule (68 FR 17560) concerning the nomenclature and taxonomy of right whales, which formally acknowledges these scientific findings by changing the species name of the northern right whale as follows: the North Atlantic right whale, *Eubalaena glacialis*, and the North Pacific right whale, *Eubalaena japonica*. These technical changes did not affect the listing status of these species under the ESA (all three remain "endangered").

Status of North Atlantic Right Whale

The North Atlantic right whale is one of the world's most critically endangered species of large whale (Clapham *et al.* 1999). Despite nearly three-quarters of a century of international legal protection, the right whale has not shown any recovery towards its pre-exploitation numbers. Recent studies on the current population trend in right whales suggest that, if the population decline is not reversed, the species is likely to become extinct in less than 200 years (Caswell *et al.* 1999). More than 800 years of uncontrolled and intense hunting is the primary reason that the right whale population has declined to such a precarious level. Today, ship strikes and entanglements in fishing gear are the primary, human-related causes of serious injury and mortality to right whales that impede the species' recovery.

Exploitation: North Atlantic right whales were the first target of commercial whaling and, consequently, the first large whale species to be hunted to near extinction by such efforts. Several characteristics specifically attributable to the right whale made it a highly desirable

resource, such as its large yield of commercially valuable products (e.g., oil and baleen), its slow swimming speed, its distinction of floating when dead, and its generally coastal distribution. These factors also contributed to the whale's common name, which is said to have originated from the English whalers who designated this species of whale as the "right" (i.e., correct) whale to hunt.

The commercial harvest of right whales began with Basque whalers taking substantial numbers of them as early as the 1500s in the Strait of Belle Isle region (Aguilar, 1986). As the stocks in the eastern North Atlantic became depleted, hunting effort shifted to the western North Atlantic, off the Labrador and New England coasts. This intense period of early whaling may have resulted in a significant reduction in the stock of right whales by the time colonists in the Plymouth area began hunting for right whales in the 1600s (Reeves and Mitchell, 1987). A modest but persistent whaling effort along the coast of the eastern United States lasted three centuries, and the records include one report of 29 whales killed in Cape Cod Bay in a single day during January 1700. The right whales' vulnerability to over-exploitation was noticed as early as the 19th century. For example, in 1851, Herman Melville wrote that, although still numerous at that time, the right whale could vanish from the earth under the hunting pressure then being applied to the species. However, Melville's prophetic observation went largely ignored for over 80 years, and the traditional high-seas Yankee whale fishery made way for a modern, industrial, and efficient whaling fleet. Finally, in 1935, the species had declined to such low levels that the League of Nations was able to get most whaling nations to agree to stop hunting right whales.

Abundance and Trends: An estimate of the pre-exploitation population size of right whales is not available. However, based on historical catch levels, right whale abundance probably exceeded 10,000 animals. The historic range of North Atlantic right whales extended from as far south as Florida and northwestern Africa to as far north as Labrador, southern Greenland, Iceland, and Norway (Kenney, 2002). Commercial whaling severely depleted the population to the point where right whales are no longer abundant in portions of their historical range (e.g., the Strait of Belle Isle, Newfoundland, the coastal waters of Long Island, New York, and Delaware Bay). Therefore, the present range of North Atlantic right whales, from Florida to Nova Scotia, is